

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

INDEX

Falls Church, Virginia 22041

File: A74 439 689 - Eloy

Date:

MAR 16 2000

In re: VIGEN MUSHEGIAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF SERVICE: Kim M. Kucik
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] -
Crime involving moral turpitude

Lodged: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Termination of proceedings

ORDER:

PER CURIAM. We have jurisdiction over this timely appeal pursuant to 8 C.F.R. § 3.1(b). On appeal, the Immigration and Naturalization Service challenges the Immigration Judge's decision to terminate proceedings. The Immigration Judge terminated proceedings on the ground that the Notice to Appear (Form I-862) in this case was improvidently issued because the Service had not terminated the respondent's asylee status prior to the issuance of the Notice to Appear.

The record establishes that on April 3, 1996, the respondent was granted the status of an asylee in the United States. However, the respondent never adjusted his status to that of a lawful permanent resident. Moreover, on August 24, 1998, the respondent was convicted for the offenses of petty theft with a prior and dissuade witness by force/threat. On May 20, 1999, the Service issued a Notice of Intent to Terminate the respondent's status as an asylee. See Exhibits 1-4-1 and 1-4-2; Tr. at 13-15.

The regulation at 8 C.F.R. § 208.22(e) provides that an Immigration Judge may terminate a grant of asylum or withholding of removal or deportation made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service and that any termination by the Immigration Judge may occur in conjunction with an exclusion, deportation, or removal proceeding. Accordingly, pursuant to regulation, the termination of asylee status need not be accomplished by the Service prior to the commencement of removal proceedings. Rather, an

Immigration Judge may terminate asylee status based upon the evidence presented in a removal proceeding at any time after the alien has been provided with notice of intent to terminate asylee status by the Service.

Inasmuch as an Immigration Judge may terminate asylee status in conjunction with removal proceedings, the failure of the Service to terminate asylee status prior to the commencement of removal proceedings is not fatal to the Service's ability to commence proceedings. Therefore, the Immigration Judge erred in determining that the instant Notice to Appear had been improvidently issued.

Based on the foregoing, the Service's appeal is sustained and the record is remanded to the Immigration Judge in order that he may conduct the instant removal proceedings.

A handwritten signature in cursive script, appearing to read "Michael J. V.", is written over a horizontal line.

FOR THE BOARD